

# Exhibit 5

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE PORTFOLIO RECOVERY ) Case No. 11md02295-JAH-BGS  
ASSOCIATES, LLC TELEPHONE )  
CONSUMER PROTECTION ACT ) Hon. John A. Houston  
LITIGATION, ) Hon. Bernard G. Skomal  
)  
)  
)  
)  
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DEPOSITION OF ALEX DEMCZAK

March 26, 2018

Richmond, Virginia

Reported by: Heather R. Gunn

Deposition of ALEX DEMCZAK, taken by and before  
Heather R. Gunn, Notary Public in and for the Commonwealth  
of Virginia at large, pursuant to the Rules of Court, and by  
Notice to take deposition, commencing at 9:00 a.m., March  
26, 2018, at the law offices of Troutman Sanders LLP, 1001  
Haxall Point, Richmond, Virginia 23219.

Appearances:

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1       that don't deal in ATDSs, don't have an ATDS, would  
2       need to know if a number was a cell phone or a  
3       residential phone?

4               MS. ROBBINS: Objection, foundation. Go  
5       ahead.

6       A       Well, yeah, because of regulations. If  
7       you're using a predictive dialer, you cannot call a  
8       cell phone with a predictive dialer.

9       BY MR. MILTENBERGER:

10       Q       Well, you can't call a cell phone --

11       A       Without express written consent.

12       Q       Okay. So, in your mind, a predictive  
13       dialer is an ATDS; is that right?

14       A       No.

15       Q       Okay. So can you not call the cell phone  
16       with an ATDS or not call a cell phone with a  
17       predictive dialer?

18       A       I would say you can't call a cell phone  
19       with either.

20       Q       Is the Avaya Proactive Contact System a  
21       predictive dialer?

22       A       It is.

23       Q       So you can't call a cell phone with an  
24       Avaya Proactive Contact center or you would be  
25       violating the law?

1           A       It's -- usually would be accidentally  
2       because one of the things, unfortunately, in this  
3       world, is you can have a landline today, get it  
4       converted over to a cellular number -- forgive me  
5       for going on about this -- but that's referred to as  
6       being ported over and that porting can take time.

7                       It's -- they're not required to  
8       immediately say my landline is now with Verizon. So  
9       that time frame can still show up as a landline when  
10      it's actually moved to cellular. So in that  
11      instance, there is this window where a cell phone  
12      can be called when it's mistaken for a landline.

13          Q       But the Avaya Proactive Contact center,  
14      the one that PRA used, it's got a field in it where  
15      you could exclude cell phone numbers, correct?

16          A       That's correct.

17          Q       And if they use that field and they don't  
18      call cell phone numbers, then using that would not  
19      be a violation of the law, would it?

20          A       That would be correct, yes.

21          Q       But if they turn off that exclusion field  
22      and cell phone numbers are called without  
23      permission, that could be a violation of the law,  
24      correct?

25          A       Yeah. That would be corporate suicide,

1 but yes.

2 Q So the -- it's not the capabilities of the  
3 Avaya Proactive Contact center that make the  
4 difference; it's whether that field is toggled on or  
5 off, right?

6 MS. ROBBINS: Object to the form.

7 A That could be done.

8 BY MR. MILTENBERGER:

9 Q I mean, the system doesn't know whether  
10 it's on or off until you tell it but it can do  
11 either one, can't it?

12 A Yeah. That would be career ending, but  
13 sure.

14 Q It would be career ending for a company --  
15 for a person in a company to call cell phones with  
16 the Avaya Proactive Contact center without consent,  
17 correct?

18 A I would surely think so.

19 Q And you're not aware of whether PRA -- or  
20 you think PRA didn't do that in this case, don't  
21 you?

22 A I believe that, yes.

23 Q If they did, would that change your  
24 opinions?

25 MS. ROBBINS: Objection, calls for

1 speculation, lack of foundation.

2 A Yeah, I -- yeah, I...

3 BY MR. MILTENBERGER:

4 Q Let's just put a hypothetical out there:  
5 If they did call cell phones with the Avaya  
6 Proactive Contact center, would that change your  
7 opinion?

8 A Change my opinion in what way? Based --

9 Q Whether they violated the law.

10 MS. ROBBINS: I'm going to object to the  
11 extent that calls for a legal conclusion.

12 A Yeah, I mean, I can't really sit in  
13 judgment. I would be I guess more than surprised  
14 because of what I witnessed.

15 BY MR. MILTENBERGER:

16 Q It would be, in your words, corporate  
17 suicide, wouldn't it?

18 A I would say so. You don't buy the most  
19 expensive piece of equipment in the world and misuse  
20 it, which the Avaya Proactive Contact is the most  
21 expensive predictive dialer in the world.

22 Q But it gives you the option to call cell  
23 phones, doesn't it?

24 MS. ROBBINS: Object to the form.

25 A Again, you know, it's kind of like your

1 dialer. But there is a very distinctive difference  
2 between the two. And I'm sorry about this, I know  
3 I'm kind of getting technical here.

4 Q I want to be technical with you.

5 A Okay.

6 Q I want to understand.

7 A But at the end of the day, because of --  
8 you know, now we are getting into capacity. The  
9 Avaya predictive dialer, even though it is indeed a  
10 predictive dialer, also has the ability to do what's  
11 referred to as preview or manage dialing, and that  
12 is where the screen is there and the agent would  
13 literally have to hit a key to launch that call.  
14 But because that system does indeed have the ability  
15 to call predictively, it still is not permitted to  
16 be utilized.

17 Q Do you think PRA used the Avaya Proactive  
18 Contact System in preview dialing?

19 A No.

20 Q They used where the system automatically  
21 dialed, didn't they?

22 MS. ROBBINS: Objection to the form. Go  
23 ahead.

24 A Yeah, the call selections that I saw  
25 showed that they strictly were using it in



1 predictive mode and they had multiple groups of  
2 agents that called manually.

3 BY MR. MILTENBERGER:

4 Q So how do you square your opinion in 53  
5 that it wasn't an ATDS but using it to call cell  
6 phones would be a violation of the law? To be a  
7 violation of the law, doesn't it have to be an ATDS?

8 A No.

9 MS. ROBBINS: Objection, asked and  
10 answered.

11 BY MR. MILTENBERGER:

12 Q Oh, it doesn't?

13 A No, no, no. Once again, a predictive --  
14 any call launched with non-human intervention, okay,  
15 whether it's an ATDS, a power dialer, a blast  
16 dialer, anything that you want to refer to as a  
17 system that can launch a call without human  
18 intervention comes under that heading.

19 Q Comes under the ATDS heading?

20 A Or predictive dialer heading or ADAD  
21 heading, which would be automatic dialing announcing  
22 device. There is a lot of different descriptions of  
23 devices out there and I just want to be clear of  
24 where the Avaya system sits in this world. It would  
25 be more an ADAD than it would be an ATDS.

1 calls for a legal conclusion.

2 A Yeah, again, as I stated before, the  
3 federal government has not been clear on what this  
4 equipment represents. For me to call their system  
5 an ATDS takes it down another road which it is not.  
6 Okay. This is not a system that will put outbound  
7 calls in obscenely long wait queues.

8 I am sure you've been a victim where  
9 you are saying hello multiple times only to finally  
10 get a representative from India or a foreign country  
11 that's trying to sell you something. That is an  
12 ATDS.

13 What we are dealing with here in this  
14 predictive dialing system is a system that when you  
15 say hello, you are within a second connected to that  
16 agent, they are talking to you. There is -- you  
17 know, we are talking about a system that costs  
18 \$25,000 versus a system that costs a million  
19 dollars.

20 BY MR. MILTENBERGER:

21 Q So are you saying whether it's an ATDS  
22 depends on how good the system is?

23 MS. ROBBINS: Objection, calls for a legal  
24 conclusion.

25 A No, no, no, not at all. You know, again,

1 me saying hello and the agent coming on the line,  
2 correct?

3 A That's one of the issues, yeah.

4 Q And that's why you've testified -- or we  
5 have all sometimes picked up the phone -- let me  
6 rephrase. That's why we have picked up the phone  
7 sometime and there is a five second lag where we say  
8 hello, hello, hello?

9 A Right.

10 Q That's the cheap predictive dialer,  
11 correct?

12 A That's correct.

13 Q The million dollar Avaya Proactive  
14 attempts to minimize that lag, correct?

15 A Absolutely.

16 Q But they still do the same thing  
17 dialer-wise, don't they?

18 A No.

19 Q Well, let me rephrase that. Both those  
20 dialers, the cheap dialer and the Avaya, still call  
21 without an agent being on the line, correct?

22 A Yes, and a Yugo and a Lamborghini will get  
23 you to the 7-Eleven.

24 Q That's a good analysis.

25 A Okay.

1 Q You think the dialer that we all have the  
2 ten second delay on is the Yugo, correct?

3 A Absolutely.

4 Q And the Avaya Proactive is the  
5 Lamborghini, correct?

6 A That would be correct.

7 Q And both of those systems got you to the  
8 7-Eleven, didn't they?

9 A Yes, they did.

10 Q And both of those systems automatically  
11 dialed the call, didn't they?

12 A They did.

13 (The Document was marked Exhibit No. 3.)

14 BY MR. MILTENBERGER:

15 Q Handing you what's been marked as Exhibit  
16 No. 3.

17 A It's a good book.

18 Q And can you identify this? I believe it's  
19 the Amazon listing of the book you coauthored,  
20 correct?

21 A Yeah. I'm available used.

22 Q Optimizing Outbound Calling: The Strategic  
23 Use of Predictive Dialers, correct?

24 A That's correct.

25 Q And in the introduction down at the

1 server, but I'm basing that off memory because I  
2 can't read this.

3 Q Okay. So that would be number eight.

4 A Right.

5 Q And to the bottom right of that box is  
6 what?

7 A That would be the link for all those.

8 Q What do you mean by link?

9 A What brings them all together.

10 Q So number nine is the link.

11 A Yeah.

12 Q And then over on the far left is what?

13 A That would be the Avaya PDS.

14 Q The Avaya Proactive Contact center?

15 A That's correct.

16 Q We will call that number ten. Okay. Now,  
17 going back to your statement, my understanding of  
18 the architecture of PRA's system; that system we  
19 talked about is the dialing system, right?

20 A Right.

21 Q And this was given -- this being Exhibit  
22 No. 4 -- was given to you by someone from the  
23 company, correct?

24 A Yes, Josh Cherkasly, when I arrived on  
25 site.

1 Q Josh gave you this?

2 A Correct.

3 Q What did he tell you about this when he  
4 gave it to you?

5 A Just thought that this would be helpful to  
6 get an understanding of the layout as I did my  
7 review.

8 Q And it's certainly a high-level  
9 description of the calling --

10 A That's an understatement, yeah.

11 Q Let me finish my question. It's certainly  
12 a high-level description of the calling system,  
13 right?

14 A Right.

15 (The Report was marked Exhibit No. 5.)

16 BY MR. MILTENBERGER:

17 Q Can you identify that as the report you  
18 provided dated March 5, 2018 in this case?

19 A Yes, this is my report.

20 Q Does that have markings on it?

21 A It doesn't.

22 Q It's clean?

23 A Yeah, it's clean.

24 Q Okay. Now, did your report from  
25 March 5 -- let me ask it: The opinions you

1 Q And the Avaya is physically connected to  
2 the database, correct?

3 A It's physically connected to PRA's  
4 network.

5 Q PRA what?

6 A PRA's network.

7 Q Okay. And the database is connected to  
8 the network, correct?

9 A Right. All of PRA is connected to PRA's  
10 network.

11 Q And they're all connected by cables?

12 A Well, as most networks are, yeah.

13 Q So you got the Avaya Proactive Contact  
14 System; a cable runs from it to a network server?

15 A Yes.

16 Q And then a cable from the network server  
17 runs to the database, correct?

18 A In simplistic terms, yes.

19 Q So those three things that I just  
20 mentioned, they are all interconnected by hardwire  
21 cables, correct?

22 A Along with thousands of other pieces of  
23 equipment, yes.

24 Q Yes. But the three that I just mentioned  
25 are hardwired connected together, correct?

1 numbers start out in the host, in the PRA host,  
2 correct?

3 A Uh-huh.

4 Q They then go to the Avaya -- all of them  
5 go to the Avaya Proactive Contact System, correct?

6 A They get scrubbed first.

7 Q Okay. They get scrubbed where, at the  
8 host?

9 A Between the host and the dialer.

10 Q Okay. And once they get to the Avaya  
11 system, they get looked at and a subset of those  
12 numbers are then sent over to the Asimut contact  
13 system, correct?

14 A Right.

15 Q So Asimut gets its numbers from the Avaya  
16 Proactive Contact System, correct?

17 A It can, yes.

18 Q So it can but it does, doesn't it?

19 A Okay, yeah.

20 Q So if the Avaya system wasn't there,  
21 Asimut wouldn't run on that particular day unless  
22 you changed things, would it?

23 A The change is not a big change.

24 Q Okay. It's not a big change but you would  
25 have to make a change. If Avaya was down, the



1 BY MR. MILTENBERGER:

2 Q Okay. So let me be clear with my  
3 question.

4 A Okay.

5 Q If Avaya goes down and all of the numbers  
6 run out on the Asimut click-to-dial, they have  
7 dialed all the numbers they have, Asimut can no  
8 longer dial until somebody makes a change to reroute  
9 numbers to Asimut, can they?

10 MS. ROBBINS: I'm going to object as asked  
11 and answered, calls for speculation, and  
12 misstates testimony.

13 A It would be one hell of a bad scenario and  
14 I don't see it happening but, yes, that -- it's a  
15 possible scenario.

16 BY MR. MILTENBERGER:

17 Q And that's why you build redundancy in so  
18 those scenarios won't happen, correct?

19 A That would be correct.

20 Q So until this extra change is made, Asimut  
21 is contingent on Avaya being running, correct?

22 A As I stated earlier, in a limited basis,  
23 yes.

24 Q And I said contingent. I guess it'd  
25 dependent on Avaya being running, correct?

1           **A     Limited basis, yes.**

2           Q     Now, you are aware some call centers use a  
3     hosted dialing servicing, don't they?

4           A     Oh, yeah.

5           Q     And hosted means some database somewhere  
6     else is doing the dialing, right?

7           A     Correct.

8           Q     How are those data centers connected to  
9     that hosting center?

10          A     Usually through the Cloud.

11          Q     And how is the connection through the  
12     Cloud?

13          A     It can be direct data link, it could be  
14     through VOIP circuits, there is numerous ways to do  
15     it.

16          Q     And in that instant, that hosting -- in  
17     those instances, those hosting services are part of  
18     the dialing system, aren't they?

19          A     Well the hosted service in this case would  
20     be the dialing system I guess.

21          Q     And they get numbers from the call center?

22          A     Right.

23          Q     And those hosted systems, just in theory  
24     that we are talking about, they are dependent upon  
25     the call center sending them numbers, correct?

1 speculation, lack of foundation.

2 A Yeah, I mean, again, it's not unusual and  
3 when the -- I think as the new release was in place  
4 and as they started to roll this out more and more,  
5 it's not uncommon for that to be done.

6 BY MR. MILTENBERGER:

7 Q Log in once and that's all you have to log  
8 in, correct?

9 A Yeah, pretty much.

10 Q And once they logged in, the agent at PRA,  
11 then they had access to the predictive dialer mode  
12 or the Asimut click-to-dial mode, correct?

13 A Either system.

14 Q And you believe in the Asimut  
15 click-to-dial, I can't remember, the agent actually  
16 sees the number to be dialed?

17 A Yeah.

18 Q And is that important to your  
19 determination that it's not an ATDS?

20 A Not at all.

21 Q That's just one of the facts that you  
22 think exists?

23 A Yeah.

24 Q Could you turn to page nine. And the  
25 diagram at the top, does that anywhere show the

1 number that's going to be called next?

2 A No, not on this screen.

3 Q So actually the number is not shown, is  
4 it?

5 A Not on this screen, no.

6 Q And it's not shown until the next screen  
7 after the call already connects, is it?

8 A On this particular screen, yeah, but that  
9 doesn't look like the screen I saw.

10 Q Well, that's the screen you included in  
11 your report, isn't it?

12 A Yeah, yeah, it is.

13 Q So it could be that you're wrong on that,  
14 couldn't it?

15 A Could very well be.

16 Q All right. And it's only after the call  
17 connects that the account information is provided,  
18 correct?

19 A Right.

20 Q So in effect, that agent is clicking the  
21 button saying I'm ready for the next call, isn't he?

22 A Ready to make the call, yes.

23 Q Well, he doesn't know he's calling, does  
24 he?

25 A No.

1 Q Doesn't know what number he's calling,  
2 does he?

3 A No.

4 Q All he says is boom --

5 A Make a call.

6 Q -- make a call. And what makes the call?

7 A I'm not sure I understand the question.

8 Q Well, what system makes the call, what  
9 apparatus? How is the call made?

10 A Well, as I stated earlier, what's going to  
11 happen is, just like what occurred back in the '80s,  
12 a signal is going to be sent based upon the phone  
13 number here, it's going to go out to the Avaya CM,  
14 the call is going to be placed, and they are going  
15 to get the data pop.

16 Q And do you consider that auto dialing?

17 A No.

18 Q Why not?

19 A Because it's not -- to me, auto dialing is  
20 something that would occur in a more predictive  
21 mode. This is -- this isn't anything more than hot  
22 key dialing like you do on your cell phone.

23 Q Look at page eleven, paragraph 36: Asimut  
24 receives its calling information from the accounts  
25 from an SQL server, which in turn receives that